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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1934.

No. 606.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, *et al.*,

Appellants,

v.

THE UNITED STATES OF AMERICA, *et al.*,

Appellees.

No. 607.

THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO,

Appellant,

v.

THE UNITED STATES OF AMERICA, *et al.*,

Appellees.

BRIEF ON BEHALF OF HYGRADE FOOD PRODUCTS CORPORATION, APPELLEE.

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Nos. 606 and 607.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, *et al.*, Appellants, *v.* THE UNITED STATES OF AMERICA, *et al.*, Appellees.	No. 606.
THE UNION STOCK YARD AND TRANSIT COMPANY OF CHICAGO, Appellant, *v.* THE UNITED STATES OF AMERICA, *et al.*, Appellees.	No. 607.

BRIEF ON BEHALF OF HYGRADE FOOD PRODUCTS CORPORATION, APPELLEE.

Statement.

These are separate appeals to this Court as permitted by Section 238 (4) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938, from a decree of the District Court for the Southern District of New York, constituted as required by statute (38 Stat. 220, 28

(Italics in this brief are ours unless otherwise stated.)

U. S. C. Section 47), which decree (R. 61) dismissed petitions of the appellants in No. 606 (R. 3) and No. 607 (R. 47) to set aside and enjoin an order of the Interstate Commerce Commission (R. 37) based upon the report of said Commission (R. 24, 195, I. C. C. 553). The order of the Interstate Commerce Commission required the appellants to cease and desist and thereafter to abstain from collecting certain yardage charges assessed against appellee Hygrade Food Products Corporation (hereinafter called "the Hygrade Company"), on livestock in carloads consigned to the Hygrade Company at Union Stock Yards, Chicago, in instances where delivery is taken at the unloading pens provided for such purposes. The decision of the District Court upon which its decree herein attacked was based is reported below at 8 Fed. Sup. 825.

Statement of Facts.

The Hygrade Company is a packer engaged in the purchase of animals and their slaughter and preparation for food. It has various plants throughout the country, one of which is located at 3830 South Morgan Street, Chicago, Ill. (R. 99), directly north of the yards of appellant, The Union Stock Yard and Transit Company (hereinafter called "the Stock Yard Company"), and is separated from those yards only by a proposed extension of Pershing Road or 39th Street (R. 99, Ex. 1). Appellee acquired possession of this Chicago plant on August 24, 1929; prior to which time it had been in the possession of another company (R. 101).

On March 17, 1931, the Hygrade Company filed with the Interstate Commerce Commission the complaint (R.

16), upon which the order of the Commission attacked herein was based. This complaint was subsequently amended on November 2, 1931 (R. 22). The original complaint alleged that the yards of the Stock Yard Company were the depot for the line haul carriers at Chicago for the delivery of livestock, that the Stock Yard Company was the agent of the carriers in accomplishing deliveries of such livestock, that with respect to livestock consigned to the Hygrade Company at Chicago, and delivered at the yards of the Stock Yard Company, certain yardage charges therein set forth were imposed although no service in addition to regular transportation services was rendered therefor, and that the imposition of such charges was unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act, and were collected without tariff authority in violation of Section 6 thereof.

By its amended complaint, filed November 2, 1931, the Hygrade Company alleged that irrespective of the character or amount of the yardage charges, the practice of the defendants in making the yards of the Stock Yard Company their depot for the receipt and delivery of livestock at Union Stock Yards, Illinois, and in making or causing to be made deliveries of livestock at said depot, pursuant to an arrangement whereby the Stock Yard Company was enabled to and did impose yardage charges upon appellee, was unjust and unreasonable in violation of Section 1 of the Act (R. 22, 23). It was also alleged that the imposition of said yardage charges was in violation of Section 6 of the Interstate Commerce Act, since they were collected without tariff authority (R. 24). Other allegations were made which have since become immaterial.

The Chicago plant of the Hygrade Company is located only on the rails of the Chicago Junction Railway Company. Some of the livestock, which it slaughters and prepares for food, it purchases from commission men and merchants on the yards of the Stock Yard Company (R. 102). Other livestock from points outside Chicago is consigned directly to the Hygrade Company at the station called "Union Stock Yards." Livestock so consigned is delivered by the line haul carriers, with their own train crews and their own locomotives at said station, to the platforms and sidings owned and controlled by the Stock Yard Company (R. 106, 135, 162, 168, 174), and are then unloaded by employees of the Stock Yard Company and placed in unloading chutes located at the foot of runways which lead from the unloading platforms (R. 106, 110, 148, 149, 61 I. C. C. 223). The unloading service is performed by the Stock Yard Company as the agent of the carriers, and tariffs covering this charge are filed with the Commission both by the line haul carriers and by the Stock Yard Company (R. 148, 178, 179). The present tariff of the Stock Yard Company filed with the Commission covering the loading and unloading charges is in evidence as Exhibit 22.

"Union Stock Yards" is a station within the Chicago switching district (R. 112, Galligan's Tariff, No. 20-S, I. C. C. No. 182, Item 1490, at p. 70). The tariff naming Union Stock Yards as a substation at Chicago is concurred in by all the appellant line haul carriers (R. 112, 113). Union Stock Yards as a station has nothing to do with the Stock Yard Company except that the yards of the Stock Yard Company are located at that substation (R. 110, 129). The rate basis applicable to deliveries of livestock at substation Union Stock Yards is the flat Chicago rate plus $2.70 where

the delivery is made by a Western carrier, or plus $1.35 where the delivery is made by an Eastern carrier (R. 110, 178-179, and tariff references there made).

The order of the Commission relates solely to certain yardage charges which were assessed against the Hygrade Company on those shipments of livestock consigned to the Hygrade Company at Union Stock Yards and delivered by the line haul carriers into unloading pens of the Stock Yard Company, with respect to which shipments Hygrade took delivery at the unloading pens. These charges, which are assessed and collected by the Stock Yard Company (R. 106, 107, Exs. 11, 23), are 35 cents per head on cattle, 25 cents per head on calves, 12 cents per head on hogs and 8 cents per head on sheep (R. 108, Ex. 23). The charges vary between $6 and $23 a car (R. 108).

The yardage charge imposed by the Stock Yard Company is billed to the Hygrade Company on the same bill which contains the freight charges collected by the Stock Yard Company acting as the agent of the line haul carriers (R. 106, 107, 109, 150, Ex. 11). These yardage charges are collected under the purported authority of a tariff filed with the Secretary of Agriculture under the Packers and Stockyards Act (R. 151, 152, Ex. 23). It is notable that the yardage charges collected are the same whether Hygrade as consignee takes immediate possession of its livestock at the unloading pens or leaves the stock at the yards for a considerable period (R. 107, 152) and whether or not it avails itself of the holding pens or other yardage services and facilities. The assessment of the charge against the Hygrade Company when immediate delivery of the animals is taken at the unloading pen is based upon the theory that a service in addition to trans-

portation is rendered by the Stock Yard Company since "such animals must be driven across the property of the Stock Yard Company" (R. 152), and this despite the fact that appellants have provided no other way of getting the animals from the unloading pens to a location outside the yards (R. 152).

As above stated, when the trains of the line haul carriers arrive at the platform of the Stock Yard Company, the livestock is unloaded by Stock Yard employees into unloading pens (R. 149, 150), which are situated at the foot of runways leading from the platforms of the Stock Yard Company (R. 134, 135, Ex. 19). In some instances, livestock is taken directly from these unloading pens by employees of the Hygrade Company, is driven over the runways and alleys of the Stock Yard Company to scales, where it is weighed for the purpose of computing the freight charges of appellants (R. 108, 154), and is then driven out of the yards by the shortest route by the employees of the Hygrade Company (R. 107, 108, 139). It is driven out of the yards either over an overhead driveway (R. 120, 139), the ownership of which is shown to be in the Stock Yard Company (R. 120), or through an underground tunnel (R. 120, 139), the ownership of which is not shown on this record.

Unless the livestock is thus taken directly from the unloading pens by Hygrade employees, the livestock is driven by employees of the Stock Yard Company from the unloading pens to holding pens where it is held to await the arrival of the employees of the Hygrade Company, and it is then delivered to them at the holding pens and again driven as before to the weighing scales and thence through

the alleys of the Stock Yards Company by the shortest route to the plant of the Hygrade Company (R. 107, 108).

The Commission found in its report that a yardage charge might properly be levied where the livestock of the Hygrade Company was taken from the unloading pens by the employees of the Stock Yard Company and was placed by them in holding pens (R. 29, 30). The order involved in this proceeding is directed only to such livestock as is taken by the Hygrade Company direct from the unloading pens and then driven from the yards (R. 37, 38).

The evidence is clear that with respect to livestock taken by the Hygrade Company at the unloading pens, no stock-yard service is rendered (R. 108). In order that the Company may get free delivery at all, it is necessary that the stock be taken within a very short time after it is unloaded (R. 150, 167).

The weighing, which is done by the employees of the Stock Yard Company before the livestock is driven off the yards, is solely for the benefit of the railroads to enable them to determine the amount of the freight charges. The Hygrade Company settles with the consignor on the basis of the invoice weights, that is, the weight at the point of origin, and not on the basis of the weight obtained from the Stock Yard Company (R. 129). The Hygrade Company makes no sales on the Exchange (R. 137) and they have every reason to remove the livestock consigned to them as quickly as possible so that they will not have to be fed and the Hygrade Company be charged with the Stock Yard rates on feed which are higher than those prevailing in the open market (R. 108, 109).

Differences in the Character of Service Rendered to the Hygrade Company from that Rendered Commission Men and Merchants.

In making its findings and order, the Commission has distinguished between livestock which receives some stockyard service as opposed to livestock which has received no service other than the service necessary in delivering it.

The service performed by the Stock Yard Company for commission men and merchants who operate on the yards is far more extensive than that performed for the Hygrade Company. It constitutes a stockyard service a charge for which could not be well challenged, although the reasonableness thereof might be disputed. It appears from the record that the commission men and merchants receive a multitude of additional services which the Hygrade Company does not receive *and does not want*. The Yards Company furnishes sales pens for the commission men in which to sell the cattle (R. 120, 135, 137). The cattle are moved from one point to another, being driven when necessary by employees of the Stock Yard Company, which furnish pen service and water (R. 120, 153). The commission men have special pens on the yard assigned for their deliveries. Particular sections of the yards are allotted to designated commission firms in which to hold their sales (R. 137). Holding pens of various sizes are furnished for the accommodation of odd lots purchased from commission men by buyers on the yards (R. 136). Where the commission men do not have their own employees at the scales, Stock Yard employees drive the livestock to the holding pens assigned to them (R. 137). About 75 to 80 per cent, of the time, the commission men receive more than one weighing, since a

shipment consigned to them may be sold to three or four men (R. 139), and since the animals are weighed in the presence of the commission men and the buyers (R. 153). After they are so weighed, the animals are driven by employees of the Stock Yard Company to suitable holding pens where they are held to await the disposition of the purchaser (R. 153). The weights furnished by the Stock Yard Company are also used by the commission men to make account sales and return to the consignors (R. 154). None of these services is furnished to the Hygrade Company which employs its own men to drive its livestock, accounts to its consignors on the basis of the invoice weight, and must, to obtain free delivery under the Commission's order, remove the livestock before it is taken by employees of the Stock Yard from the unloading pens.

The yardage charge made against the Commission men for all these services is the same as that charged Hygrade when it takes immediate delivery at the holding pens.

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(a) At common law, the service of transportation of livestock consigned to cities included the duty to deliver at destination (a) into pens suitable for proper delivery to consignee, and (b) to consignee without additional charge 16

(b) The common law transportation duty to deliver without additional charge was recognized and continued by Congress when it enacted the Interstate Commerce Act 21

(c) The order of the Commission herein does not impose upon appellant line haul carriers obligations beyond those imposed by law 23

(d) There was no acquiescence by the Hygrade Company in the practices complained of such as to bar the granting of relief to it 25

II. Section 15 (5) of the Interstate Commerce Act was not intended to, and did not, limit the common law and statutory duty to carriers to make delivery into suitable yards, as part of their transportation duty without the imposition of any charges in addition to the line haul rate. It is a restatement of the common law duty 27

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POINT I.

The order entered herein was within the jurisdiction of the Commission. It requires merely the completion of the transportation service of delivery (a) into pens suitable for proper delivery to consignee, and (b) without additional charge.

The order of the Commission requires the appellants "to cease and desist, on or before (a date named), and thereafter to abstain from the practices described in the aforesaid report which subject complainant (the Hygrade Company) to the payment of yardage charges on livestock, in carloads, consigned to complainant at Union Stock Yards, Chicago, *in instances where delivery is taken at the unloading pens provided for such purposes*" (R. 37, 38).

The Commission states: "It does not appear that there is any occasion for placing the animals into holding pens if prompt delivery is desired. There cannot be reasonable doubt that the unloading chutes and pens are suitable for the receipt of livestock, and the accomplishment of proper delivery to complainant" (R. 30).

Where delivery is taken by employees of the Hygrade Company immediately upon being unloaded into unloading pens and is driven directly from the yards, no service in addition to the transportation service of delivery is performed and a charge in addition to that contained in the applicable tariffs may not be imposed either by the appellant carriers or by the Stock Yard Company.

The finding that no service in addition to that incident to transportation is rendered with respect to livestock, delivery of which is taken at the unloading pens is amply

sustained by the evidence. Livestock delivery of which is so taken is driven at once by the employees of the Hygrade Company to scales where it is weighed by the weigh-master of the Stock Yard Company, and is then driven directly out of the stock yards to the plant of the Hygrade Company (R. 108, 139, 150). Weights are obtained so that appellant railroads may compute their freight charges (R. 108, 154), as required by their tariffs (R. 118, 155).

The present practice, against which the order of the Commission is directed, is to assess a yardage charge, varying from $6 to $23 per car (R. 108)—the same charge which is assessed against commission men and merchants on the yards who receive stockyard services—against the Hygrade Company *merely for driving its own livestock with its own employees out of the yards of the Stock Yard Company where the railroad has delivered them* (R. 107). And there is no way in which livestock so delivered at the yards of the Stock Yard Company can be got out of the yards without passing over the driveways and alley-ways of the Stock Yard Company (R. 152).

The Commission found in its report (R. 26) that the yards of the Stock Yard Company are the livestock terminals of the line haul carriers entering Chicago, and, as is shown herein (*infra*, pp. 37 to 46) this finding is amply sustained by the evidence. Appellant line haul carriers have delivered livestock consigned to the Hygrade Company at the chutes and sidings of the Stock Yard Company even where the livestock contract specifically required that the stock should not be delivered at such yards (R. 113, 114, Exhibits 12, 13, Original Exhibits herein at pp. 7, 8).

The effect of the present practice is this: The Hygrade Company consigns livestock to *itself* at a station designated

in the tariffs of appellant carriers (R. 112, Galligan's Tariff No. 20-S, I. C. C. No. 182, Item 1490, p. 70). That station has the name of "Union Stock Yards"; not Union Stock Yard and Transit Company of Chicago. That station is as distinct a destination as is, *e. g.*, Proviso, Illinois, or Hammond, Indiana, both stations which are also in the Chicago Switching District. Hygrade pays, for delivery at that station, a rate in excess of the flat Chicago rate in the amount of $2.70 per car where the delivery is made by a western carrier or $1.35 per car where the delivery is made by an eastern carrier (R. 110, 178, 179, Galligan's Tariff No. 20-S, I. C. C. No. 182, p. 76). Appellant carriers deliver livestock consigned to this station named in their tariffs into the yards of the Stock Yard Company, which the Commission has found in its report, constitutes their terminal for the delivery of livestock at Chicago. The Hygrade Company cannot get the livestock consigned to it at that station without going upon the yards of the Stock Yard Company. *And for going upon the yards of that Company and driving its livestock away, it is compelled to pay a charge to the Stock Yard Company.* The order of the Commission herein prohibits the exaction of that charge, and that is all it prohibits.

That the transportation duty of common carriers includes the duty to receive the livestock, carry it to destination, *and deliver it to the consignee through yards suitable for proper delivery without additional charge* is a well established principle of common law, which was embodied in the Interstate Commerce Act. The order of the Commission herein merely requires that appellants perform that transportation duty.

(a) At common law, the service of transportation included the duty to deliver (a) into suitable pens for delivery to consignee, and (b) to consignee at destination without additional charge.

The common law duty of common carriers to transport and deliver livestock to the consignees in cities at destination through suitable yards without the imposition of a charge in addition to the regular line haul rates was well established long prior to the enactment of the Interstate Commerce Act. It was settled law that transportation included the duty of delivery at the place of destination, and that until delivery was made at the place of destination, the transportation service had not been completed.

North Pennsylvania Railroad Co. v. *Commercial Bank of Chicago*, 123 U. S. 727;
Covington Stock Yards Co. v. *Keith*, 139 U. S. 128.
See *Erie R. R. Co.* v. *Stuart*, 250 U. S. 465, at 468.

In the *North Pennsylvania Railroad Co.* case, a shipper had delivered to the defendant railroad company cattle for transportation, and had received in return an order bill of lading with directions to notify a certain company at the point of destination. The shipper had then drawn a draft against plaintiff bank for the acceptance of the company which was to be notified, and the plaintiff bank had forwarded it to a correspondent bank for acceptance by that company. The railroad delivered the livestock to a stockyard company which had turned it over to the company to be notified without requiring the production of the order bill of lading. This company had disposed of the livestock, and had refused to honor the draft of the plaintiff bank

upon presentation. Plaintiff bank brought suit against the railroad company for the amount of the draft, and a judgment by the lower court in favor of the plaintiff was affirmed by this Court, which stated, 123 U. S., at 733-734:

> "The duty of a common carrier is not merely to carry safely the goods intrusted to him, but *also to deliver* them to the party designated by the terms of the shipment, or to his order, *at the place of destination.* There are no conditions which would release him from this duty, except such as would also release him from the safe carriage of the goods. The undertaking of the carrier to transport goods necessarily includes the duty of delivering them. A railroad company, it is true, is not a carrier of live stock with the same responsibilities which attend it as a carrier of goods. The nature of the property, the inherent difficulties of its safe transportation, and the necessity of furnishing to the animals food and water, light and air, and protecting them from injuring each other, impose duties in many respects widely different from those devolving upon a mere carrier of goods. The most scrupulous care in the performance of his duties will not always secure the carrier from loss. But notwithstanding this difference in duties and responsibilities, the railroad company, when it undertakes generally to carry such freight, becomes subject, under similar conditions, to the same obligations, so far as the delivery of the animals which are safely transported is concerned, as in the case of goods. *They are to be delivered at the place of destination to the party designated to receive them* if he presents himself, or can with reasonable efforts be found, or to his order. No obligation of the carrier, whether the freight consists of goods or of livestock is more strictly enforced. *Forbes* v. *Boston & Lowell Rail-*

road Co., 133 Mass. 154; *McEntee* v. *New Jersey Steamboat Co.*, 45 N. Y. 34."

In the case of *Covington Stock Yards Company* v. *Keith*, 139 U. S. 128 (decided October Term, 1890), the Court had before it a consideration of the duties of carriers with respect to the delivery of livestock in cities. It held that the carriers' duty to deliver, as a part of transportation, imposed upon it two obligations with respect to the delivery of livestock in cities, to wit: (a) the duty of providing "inclosed yards or lots, convenient to the place of unloading" such "as will enable it properly to deliver the stock to the consignee"; and (b) to complete the delivery of the stock without additional charge.

With respect to the duty of the carrier to provide yards proper for delivery therefrom of the live stock, the court said (139 U. S. 128 at 134):

> "When animals are offered to a carrier of live stock to be transported it is its duty to receive them; and that duty cannot be efficiently discharged, at least in a town or city, without the aid of yards in which the stock offered for shipment can be received and handled with safety and without inconvenience to the public while being loaded upon the cars in which they are to be transported. So, when live stock reach the place to which they are consigned, it is the duty of the carrier to deliver them to the consignee; and such delivery cannot be safely or effectively made except in or through inclosed yards or lots, convenient to the place of unloading. In other words, the duty to receive, transport and deliver live stock will not be fully discharged, unless the carrier makes such provision, at the place of loading, as will enable it to properly receive and load the stock, and

such provision, at the place of unloading, as will enable it to properly deliver the stock to the consignee."

With respect to the duty of completing its delivery without extra charge, the court said (139 U. S. at 135, 136):

"* * * A carrier of live stock has no more right to make a special charge for merely receiving or merely delivering such stock, in and through stock yards provided by itself, in order that it may properly receive and load, or unload and deliver, such stock, than a carrier of passengers may make a special charge for the use of its passenger depot by passengers when proceeding to or coming from its trains, or than a carrier may charge the shipper for the use of its general freight depot in merely delivering his goods for shipment, or the consignee of such goods for its use in merely receiving them there within a reasonable time after they are unloaded from the cars. If the carrier may not make such special charges in respect to stock yards which itself owns, maintains or controls, it cannot invest another corporation or company with authority to impose burdens of that kind upon shippers and consignees. The transportation of live stock begins with their delivery to the carrier to be loaded upon its cars, and ends only after the stock is unloaded and delivered, or offered to be delivered, to the consignee, if to be found, at such place as admits of their being safely taken into possession."

The common law therefore required that a carrier should provide facilities for the receipt and delivery of livestock without cost to the shipper in addition to the lawful line haul rates applicable. It was, of course, in the discretion of the carrier whether it would provide the facilities by

building and maintaining them at its own cost, or whether it would employ the facilities of others. But whatever method was adopted, the common law required that the carrier and not the consignee or shipper should bear the charges, if any, for the receipt and delivery of livestock.

On the facts, the situation in the *Covington* case is, we submit, on all fours with the situation in the instant case. Covington was a station on the Kentucky Central Railroad. Union Stock Yards is a station on the Chicago Junction Railway and by trackage arrangement is a station of all of the appellants herein. In the *Covington* case, the railroad had not provided any facilities of its own at that station for handling livestock. The same is true in the present case. In the *Covington* case, the railroad had turned over to a privately owned stockyards the task of handling livestock consigned to shippers at Covington. The railroads have done the same with respect to the Union Stock Yards in the present case. In the *Covington* case, the original complainant, Keith, had facilities of his own alongside of the privately owned stockyards to which the railroad was making delivery and Keith desired to have delivery of livestock made onto his own facilities. The same situation is true in the instant case with respect to the Hygrade Company; it has facilities of its own immediately adjoining the Stock Yards facilities and on the rails of the Chicago Junction Railway. In the *Covington* case the court confronted the carriers with the alternative of making deliveries to Keith through the privately owned stockyards used by the railroad free of charge, or of the delivery to Keith in his own facilities. In the instant case, the Commission denied to Hygrade the alternative of delivery into its own facilities, but did require delivery free

of additional charge through the privately owned facilities actually provided by the railroads.

(b) The common law transportation duty to deliver without additional charge was recognized and continued by Congress when it enacted the Interstate Commerce Act.

The legislation which Congress has enacted defining the duties of common carriers, and conferring upon the Interstate Commerce Commission the power to enforce those duties, has recognized that the duty of transportation undertaken by common carriers includes that of delivery. The Interstate Commerce Act, as amended, has conferred upon the Commission jurisdiction to regulate the charges and practices of common carriers subject to the Act in connection with the delivery of property. Interstate Commerce Act, Sections 12 (1) and 15 (1).

The original Act to Regulate Commerce, approved February 4, 1887, chapter 104, 24 Stat. 379, provided in Section 1 thereof that all charges for any service rendered or to be rendered in the transportation of passengers or property

> "or for the receiving, *delivering*, storage or handling of such property shall be reasonable and just."

The original Act therefore expressly recognized that the duty to transport included the duty to deliver at destination. If any doubt existed under the original Act that transportation included the duty of delivery, it was resolved by the amendment to the Act by the Act of June 29, 1906, chapter 3591, 34 Stat. 584. Section 1 of that Act defined the term "railroad" to include all facilities used or necessary in the delivery of property, and also defined the term

"transportation" to include all services in connection with delivery. The pertinent part of the section is as follows:

> "The term 'railroad,' as used in this Act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards and grounds used or necessary in the transportation or *delivery* of any of said property; and the term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and *all services in connection with the receipt, delivery,* elevation, and transfer in transit, ventilation, refrigeration or icing, storage, *and handling of property transported.*"

The definitions of the terms "railroad" and "transportation" were again enlarged by the Act of February 28, 1920, chapter 91, Section 400, 41 Stat. 474.

This Court held in *C. C. C. & St. L. R. Co.* v. *Dettlebach*, 239 U. S. 588, that by the amendment to the Act to Regulate Commerce, approved June 29, 1906, Congress recognized that the duty of the carriers to the public included the performance of a variety of services which, according to the theory of the common law, were separable from the carrier's service as carrier, and that in order to prevent overcharges and discriminations from being made under the pretext of performing additional services, it was enacted

that, so far as interstate carriers by rail were concerned, the entire body of such services should be included together under the single term "transportation" and subjected to the provisions of the Act respecting reasonable rates and the like. Congress, in defining the term "transportation" to include "delivery," did not extend the common law duty of the carriers, but merely incorporated into the statute law in explicit terms a requirement which had existed theretofore at common law, and conferred jurisdiction upon the Interstate Commerce Commission to enforce the delivery duty of the carriers.

(c) The order of the Commission does not impose upon appellant line haul carriers obligations beyond those imposed by law.

The record herein shows that egress from the yards of the Stock Yards Company is afforded to the Hygrade Company by means of an elevated driveway over the pens of the Stock Yard Company, and also by means of a tunnel under the proposed Pershing Road, which separate the yards from the plant of the Hygrade Company (R. 121, 139). The record shows, contrary to the statement made in appellant carriers' brief at 49-54, that both of these facilities are employed by the Hygrade Company in removing its livestock from the yards of the Stock Yard Company. The testimony of the assistant to the head hog buyer of the Hygrade Company shows that the livestock "are taken over an overhead viaduct leading into the packing house *and* down through the subway where the river used to be" (R. 139).

Appellant carriers claim for the first time in this Court that, because some of the livestock consigned to the Hygrade

Company and delivered at the yards may be driven by the employees of the Hygrade Company over the viaduct owned by the Stock Yard Company, the order directing that no yardage charge be imposed is void. (Brief in 606, pp. 49-54.) This claim was never urged before the Commission nor before the lower court in this case. It was not included in the assignment of errors of the appellants in No. 606, and it should not be considered here.

Clark v. *Williard*, 55 Sup. Ct. 356, at 358, decided February 4, 1935;
Zellerbach Co. v. *Helvering*, 293 U. S. 172;
Warner Co. v. *Independent Pier Co.*, 278 U. S. 85, at 91.

Even though this Court choose to consider the argument, it is obviously untenable. Appellant carriers have constituted the yards of the Stock Yard Company their terminal at Chicago. They deliver livestock consigned to the Hygrade at Union Stock Yards into those yards. Under these circumstances, they must afford to the Hygrade Company a means of egress therefrom without additional charge, and any facility which is necessary for that purpose is not a special facility. A carrier, to fulfill its obligation to deliver, must provide without charge a convenient and adequate way for the consignee to come and get his goods and take them safely from the carrier's property, or from the property which the carrier has seen fit to employ, without additional charge.

Covington Stock-Yards v. *Keith*, 139 U. S. 128 at 134;

Norfolk & Western Railway Co. v. *Public Service Commission of West Virginia*, 265 U. S. 70, at 74.

This Court said in the latter case, at 74:

> "Any measure promulgated by the state to require a railroad company to provide suitable facilities reasonably necessary for the removal from its premises of freight carried by it for its customers does not create a new duty or impose any unnecessary burden."

(d) There was no acquiescence by the Hygrade Company in the practices complained of such as to bar the granting of relief to it.

The Hygrade Company purchased and took possession of its Chicago plant on August 24, 1929 (R. 101). It filed its complaint herein on March 17, 1931, well within the time limited by the Interstate Commerce Act within which suits to recover reparations may be brought. Section 16, paragraph 3 of the Interstate Commerce Act provides in subparagraph (b) thereof that all complaints against carriers subject to the Act for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues. The complaint herein was filed one year and seven months after the Hygrade Company took possession of its plant, and reparation was sought with respect to all shipments delivered to the Hygrade Company since it took possession of the plant (R. 103). The complaint was filed with the Commission only after the Hygrade Company had ascertained that the appellants would not voluntarily alter the practices whereby the Hygrade Company was subjected to the

payment of charges in addition to the line-haul rate for the mere transportation service of delivery. But it was brought prior to the time when any single claim for reparations was barred by the Statute of Limitations prescribed in the Act.

This Court had held on numerous occasions that objectionable practices of the carrier with respect to transportation may be stopped by order of the Commission irrespective of the length of time they may have continued.

> *Los Angeles Switching Case*, 234 U. S. 294;
> *Louisville & Nashville R. R. Co.* v. *United States*, 282 U. S. 740.

This Court said in the *Los Angeles Switching Case*, 234 U. S., at 312-313:

> "It is further urged that while the contracts for the construction of these spurs did not fix the charge, it was proved by undisputed evidence that at the time these contracts were made the shippers consented to a special charge, if freight were received and delivered thereon, and that the charge in question had been generally maintained. The service, however, was performed subject to the law of the land requiring that the carrier's charges should not be unreasonable or unjustly discriminatory. (See *Louisville & Nashville R. R. Co.* v. *Mottley*, 219 U. S. 467, 482; *Phila., Balt. & Wash. R. R. Co.* v. *Schubert*, 224 U. S. 603, 613, 614.) If it became apparent that the shippers were subjected to an arbitrary and unwarranted exaction, they were in no way estopped from bringing the matter before the body created by law to deal with such questions and from securing its order directing the carriers to stop the objectionable practise."

And it recently said in *Louisville & Nashville R. R. Co. v. U. S.*, 282 U. S. 740, at 759:

> "Long continued practice and the approval of administrative authorities may be persuasive in the interpretation of doubtful provisions of a statute, but cannot alter provisions that are clear and explicit when related to the facts disclosed. A failure to enforce the law does not change it. The good faith of the carriers in the transactions of the past may be unquestioned, but that does not justify the continuance of the practice."

The principles announced by this Court in the foregoing cases apply here. The practice of the appellants of creating a situation whereby charges in addition to the lawful applicable rates may be and are assessed against the Hygrade Company for the mere transportation service of delivery have been found to be unlawful, and an order directing that they may be stopped is justified.

POINT II.

Section 15 (5) of the Interstate Commerce Act was not intended to, and did not, limit the common law and statutory duty of carriers to make delivery into suitable yards as part of their transportation duty without the imposition of any charges in addition to the line haul rate. It is a restatement of the common law duty.

While appellant carriers do not seriously contest that at common law, and under the provisions of Section 1 (3) of the Interstate Commerce Act, the duty of transportation

which they undertake includes the duty of delivery to the consignee at a place where he might safely take into possession all livestock consigned to him and remove them without being required to pay charges in addition to the lawfully applicable tariff charges, they contend that paragraph 5 of Section 15 of the Interstate Commerce Act was intended to limit that duty, in the case of deliveries made at public stockyards, to delivery into suitable pens within such yards. If this contention is sustained, it will enable line haul carriers, merely by designating public stockyards as their terminals, at various points throughout the country, to place it in the power of such public stockyards to levy upon, and exact from, consignees a charge in addition to the rates prescribed in tariffs published by the carriers, and will thus permit the introduction of the abuses which the Interstate Commerce Act was designed to abolish. *C. C. C. & St. L. R. Co.* v. *Dettlebach*, 239 U. S. 588 at 594. But aside from this consideration, however important it may be, the history of the enactment of Section 15 (5), the terms thereof, and its construction by the Interstate Commerce Commission, the body charged with its enforcement, show that it was intended not as a restriction upon the duties of common carriers, but as a clarification of their duties in respect of delivery through a public stock yards. It made it clear that where such delivery was made, no charge by anybody should be made to the shipper for unloading into suitable pens. It clearly provided that transportation should include such delivery into "*suitable*" pens—that is, suitable among other things, for the consignee to obtain delivery without further charge.

(a) The history of Section 15 (5) of the Interstate Commerce Act shows that the purpose of the Act was to re-emphasize and re-confirm the fundamental proposition that delivery should be made to the consignee through facilities suitable for such delivery without extra charge over the line haul rate.

The commission merchants at the Union Stock Yards, Chicago, were confronted with the burden of paying an unloading charge over and above the line haul rate. The matter they complained of was this unloading charge. At the time of the enactment of Section 15 (5) the Commission had decided (52 I. C. C. 209) that the unloading charge was a proper charge. (As the Court is aware, the Commission subsequently reversed itself on this point and its reversal was sustained in *Adams* v. *Mills*, 286 U. S. 397.)

An appeal was made to Congress. Congress, true to the concept that delivery should be made without additional charge, prescribed in Section 15 (5) that the additional charge for unloading complained of should not be collected.

As was said by the Interstate Commerce Commission in the *Allied Packers case*, 161 I. C. C., at 646:

> "The history and circumstances leading up to the legislation indicate a purpose only to prohibit the addition of these charges (the loading and unloading charges) to the line-haul charges on shipments of livestock to and from public yards. The terms of the paragraph do not indicate an intention to redefine transportation or to modify or restrict the conception of it contained in section 1, or to restrict our jurisdiction."

The appellants would have us believe that, whereas the law before Section 15 (5) with respect to deliveries into public stock yards required that the consignee be so circum-

stanced as to be able to receive his freight without extra charge over and above the line haul rate (either extra charge for unloading or extra charge for yardage), Congress had intended by Section 15 (5) to take away from shippers rights with respect to delivery which had existed theretofore and to leave them in a position where the entire transportation duty was completed upon the cattle being dumped down into the unloading pen inaccessible to the consignee unless he paid a further charge to a private company. The mere statement of the proposition shows how untenable such a contention is.

The word "suitable" used in Section 15 (5) obviously meant more than suitable to prevent the animals escaping or being injured. The carriers and the Stock Yard Company would in any event have to maintain that sort of suitability to protect themselves against damage claims or violation of city ordinances. The main connotation of the word "suitable" was that it should be suitable for accomplishing actual delivery of the stock to the consignee thereby enabling the carriers to complete their transportation duties. This was the view of the Interstate Commerce Commission in the *Allied Packers* case, 161 I. C. C. 641 at 644, and was its view in the instant case (R. 59) and is in accordance with what the Court established to be the duties of the carriers with respect to unloading pens in the *Covington* case. The appellants would have us believe that under Section 15 (5) the carriers could with propriety unload the cattle into pens from which there was no exit except by a gate into holding pens for the use of which holding pens yardage charges might properly be imposed.

(b) The express terms of Section 15 (5) of the Act demonstrate that this section was not intended as a limitation on the duties of the carriers with respect to transportation as defined by Section 1 (3) of the Act.

Paragraph 5 of Section 15 of the Interstate Commerce Act was added to the Act by Section 418 of the Act of February 28, 1920, 41 Stat. 486. It provides that transportation wholly by railroad of ordinary livestock in carloads destined to or received at public stockyards shall "include" • • • "delivery at public stockyards of inbound shipments into suitable pens • • • without extra charge therefor to the shipper, consignee or owner", with exceptions not here pertinent. It will be noted that "transportation" is defined in Section 15 (5) to "include" a certain service. It is the same term which is used in Section 1, paragraph 3, of the Act, where the term "railroad" is defined to "include" certain facilities not theretofore considered as implicit in that term, and where the term "transportation" is defined to "include" certain services and facilities which would not ordinarily be considered as coming within the meaning of that term. Controversy having arisen as to whether unloading into a public stock yard was included in transportation without extra charge, Congress set this at rest by saying that it was so included. The use in Section 15 (5) of the same term as that contained in Section 1, paragraph 3 of the Act indicates the purpose of Congress.

If there had been any intention on the part of Congress to enlarge a previous duty of the carrier and to restrict the carrier's additional duty merely to unloading, it would have employed terms appropriate to accomplish that purpose. It might easily have said, if such were its intention, that the transportation of livestock destined to or

received at public stockyards "shall be limited to" unloading into suitable pens at such yards.

(c) The Interstate Commerce Commission, the body charged with the administration of the Act, has held that Section 15 (5) was not a limitation upon its jurisdiction to require carriers to make delivery without additional charge.

The construction of an act by an administrative body charged with its enforcement has been held to be entitled to great weight by the courts.

> *U. S.* v. *C. N. S. & M. R. Co.*, 288 U. S. 1, at 13;
> *Brewster* v. *Gage*, 280 U. S. 327, at 336;
> *N. Y. N. H. & H. R. Co.* v. *I. C. C.*, 200 U. S. 361, at 401.

Consequently, the interpretation placed upon Section 15 (5) by the Interstate Commerce Commission should be followed in this case unless it is obviously erroneous.

Appellant carriers contend in their brief that the Commission has placed a construction upon this section of the Act which limits the duty of the carriers to the mere service of unloading at public stockyards. To support this construction, they cite *Southwestern Horse & Mule Co.* v. *Carriers*, 129 I. C. C. 730, and *Allied Packers* v. *Carriers*, 144 I. C. C. 377. Neither of these decisions was a decision by the full Commission. The *Southwestern Horse & Mule Co.* case was decided by Division 1 of the Commission consisting of three of the eleven Commissioners, and the *Allied Packers* case was decided by Division 2 of the Commission also consisting of three of the eleven Commissioners.

The only case in which the question of the contruction of Section 15 (5) was considered by the full Commission is *Allied Packers* v. *A. T. & S. F. Ry. Co.*, 161 I. C. C. 641. The full Commission there reversed the decision of Division

2 (144 I. C. C. 377), and held that it had jurisdiction over yardage charges assessed at public stockyards where no transportation service beyond that of delivery was rendered. The Commission there said, referring to Section 15 (5), at page 646:

> "The enactment of the paragraph in question is traceable to our decision in *Live Stock Loading and Unloading Charges*, 52 I. C. C. 209, wherein we upheld the carriers in their refusal to absorb on shipments of livestock the increases in loading and unloading charges of the public stockyards at Chicago. The history and circumstances leading up to the legislation indicate a purpose only to prohibit the addition of these charges to the line-haul charges on shipments of livestock to and from public stockyards. The terms of the paragraph do not indicate an intention to redefine transportation or to modify or restrict the definition of transportation contained in section 1, or to restrict our jurisdiction. The sense of the paragraph is that the services named shall be performed at the carriers' expense without additional charge to the shipper.
>
> The specific enactment takes precedence over the general enactment only where there is conflict between the two; in the absence of conflict both must be given effect. A specific provision that with respect to certain shipments certain services shall be included within the term transportation is not in conflict with a general provision which merely includes in the same term a great variety of services with respect to all classes of shipments. If a particular service is included in the general definition, the failure to include the same service in a specific provision covering certain shipments does not indicate an intention to exclude such services. The paragraph in question contains no words indicating an

> intention to repeal or modify section 1 (3), and repeals by implication will not be indulged if there is any other reasonable construction. *25 Ruling Case Law*, page 918."

It further said at page 647:

> "We find that the charges herein assailed in so far as they were assessed for the use of the stockyards facilities in effecting delivery of interstate shipments were charges for transportation within the meaning of that term as defined in section 1 of the interstate commerce act, and that we have jurisdiction to pass upon the legality and reasonableness of such charges."

E. Kahn's Sons Co. v. *Carriers*, 192 I. C. C. 705, and *Adolf Gobel, Inc.* v. *B. & O. R. R. Co.*, 200 I. C. C. 606, cited by appellant carriers in their brief at pages 33-34, are not in point. In both of these cases the complainants could obtain free delivery at the unloading pens without the imposition of any additional charge for the mere service of delivery. The order of the Commission in the present case merely prohibits the assessment of charges under circumstances in which no charges were attempted to be assessed by the defendants in those cases. Thus, the report of the Commission in *E. Kahn's Sons Co.* v. *Carriers* stated, 192 I. C. C. 705, at 706:

> "No additional charge is made if the livestock is removed by consignees from the unloading pens before it is weighed, but when it is taken from the unloading pens, is weighed, and is placed in the holding pens, the yardage charges here assailed are made regardless of the length of time the holding pens are occupied. This charge is made also where consignees take possession of the livestock at the scales."

The quotation from the tariff of the Union Stock Yard Company of New Jersey, contained in the report of the Commission in the *Adolf Gobel, Inc.*, case, at 608, shows that a similar condition prevailed at the yards of that Company.

The opinion of the Commission must be read in connection with the facts upon which it was based. *Doyle* v. *Continental*, 94 U. S. 535.

Admittedly, the jurisdiction of the Commission does not extend to charges for stockyard services, and it was in connection with an attempt to invoke its jurisdiction to obtain relief from the imposition of charges for yardage services that the language quoted in the briefs of appellant carriers was used.

POINT III.

The jurisdiction of the Interstate Commerce Commission was not limited by the Packers and Stockyards Act, 1921.

Appellants contend that the Packers and Stockyards Act, 1921, 42 Stat. 159, was intended to and did limit the jurisdiction of the Interstate Commerce Commission to such services as were required by the carriers to unload livestock at public stockyards into suitable pens (Brief in No. 606, at 24). That Act, however, was intended solely to regulate the operations of public stockyards in their capacity as a market place for buying, selling and dealing in livestock, and to regulate the commission men, traders and others operating on the yards. The Act provided that nothing therein contained should affect the power or jurisdiction of the Interstate Commerce Commission, nor confer

upon the Secretary (of Agriculture) concurrent power or jurisdiction over any matter within the power or jurisdiction of such Commission.

The plainly expressed intention of the Act, therefore, is to confer upon the Secretary of Agriculture jurisdiction over such services only as are not a part of the transportation duty of the carriers. The Interstate Commerce Commission has so recognized in the case of *Allied Packers v. A. T. & S. F. Ry. Co.*, 161 I. C. C. 641. The contention was there made that the Packers and Stockyards Act had removed from the Commission the power to regulate the practices of carriers at the Buffalo Stockyards whereunder an additional charge was assessed upon the consignees for the mere service of delivery. The Commission, in rejecting this contention, stated, 161 I. C. C. at 647, as follows:

> "The primary purpose of the packers and stockyards act, 1921, is to regulate the operations of packers, commission merchants, and stockyard owners in connection with the handling of livestock consigned for sale at primary markets, *Stafford* v. *Wallace*, 258 U. S. 495, 514. That act expressly states that its provisions shall not affect the power or jurisdiction of this commission, nor confer upon the Secretary of Agriculture concurrent power or jurisdiction over any matter within our power or jurisdiction. In considering the question of our jurisdiction over certain service charges collected on shipments of livestock stopped en route for food, water, and rest, we stated in *Strauss & Adler* v. *New York C. R. Co.*, 153 I. C. C. 609, at page 618:
>
> > 'Bearing in mind that the two acts should be construed in a manner not to create a conflict or overlapping of jurisdictions of the two Federal agencies entrusted with their enforcement, and

recognizing that any doubt which may exist is by the above provision to be resolved in favor of the authority delegated in the older of the two statutes, we can see nothing in the provisions of the packers and stockyards act, 1921, which in any way limits or affects the jurisdiction of this commission previously conferred to regulate 'all charges * * * for any service rendered or to be rendered in the transportation of passengers or property.' "

POINT IV.

The finding of the Interstate Commerce Commission in its report that the yards of the Stock Yard Company are the livestock terminal at Chicago of the appellant line haul carriers is amply sustained both by the evidence and by authority.

The Commission found in its report that the yards of the Stock Yard Company are the livestock terminal of all of the line haul carriers at Chicago (R. 26). If this finding of the Commission is supported by evidence, it is final and conclusive.

Adams v. *Mills*, 286 U. S. 397, at 410;
A. T. & S. F. Railway Co. v. *United States*, 232 U. S. 199, at 221;
Los Angeles Switching Case, 234 U. S. 294, at 310, 311.

The evidence in the record in this case is ample to support the finding of the Commission. It shows that when the Stock Yard Company was incorporated, $925,000 of its $1,000,000 authorized capital stock was subscribed by the nine trunk railroads then reaching Chicago (R. 147).

Its charter conferred upon it the right to construct and operate a stock yards, and also provided in Section 3 thereof that "the said Company shall construct a railway, with one or more tracks, as may be expedient, over the grounds which may be selected for its said yards, so as to connect, outside of the City of Chicago, the same with tracks of all the railroads which terminate in Chicago * * * and shall have the right and power to make such connections with such suitable sidetracks, switches, and connections as to enable all of the trains running upon said railroads easily and conveniently to approach the grounds selected for said yards, and may make such arrangements or contracts with such railroad companies, or either of them, for the use of any part or portion of the track or tracks of such company or companies, which now is or hereafter may be constructed, for the purpose aforesaid as may be agreed upon between the parties" (Exhibits 20, 21, Original Exhibits filed herein, pp. 10-26).

Section 3 of the charter of the Stock Yard Company indicates that it was organized with the intention that it should construct a railway over which the engines, trains and crews of the line haul carriers might haul their train loads of livestock directly to the yards of the Stock Yard Company. As soon as the railroad of the Stock Yard Company was constructed, this practice was inaugurated, and still continues to exist (R. 162). The only through rate for livestock applying to deliveries on the rails of the Chicago Junction Railway is that which applies to deliveries at the platforms and chutes of the Stock Yard Company (R. 164, 179).

Tariffs concurred in by all of the trunk line railways entering Chicago name Union Stock Yards as a sub-station within the Chicago switching district (R. 110, 112, Galli-

gan's Tariff No. 20-S, I. C. C. No. 182, Item 1490, p. 70), and also state the rates applicable to deliveries at that sub-station (R. 112, 113, Galligan's Tariff No. 20-S, I. C. C. No. 182, p. 76). These rates are higher by $2.70 in the case of deliveries by western carriers and $1.35 in the case of deliveries by eastern carriers than the flat Chicago rates (R. 110, 178, 179).

There is considerable evidence in the record that delivery by the line haul carriers in train load lots with their own engines and with their own crews at the platforms of the Stock Yard Company is the only method by which the volume of livestock daily reaching Chicago could be efficiently handled. In 1930 the Stock Yard Company unloaded for 23 railroads 204,828 cars containing more than 14,000,000 animals, and loaded out 48,501 cars. Practically all of these cars were brought to the Stock Yard Company chutes in train load lots, some trains having as many as 70 cars (R. 149). The report of the Commission in 71 I. C. C. 631 wherein it was stated that all parties agreed that this was the only practical method of handling the livestock traffic at Chicago was referred to, and the witness declared that this conclusion was correct (R. 151, 153, 154). If side-track deliveries were again required, it was declared that it would be a reversion to practices which obtained over 25 to 50 years ago, but which had been outgrown (R. 156, 166).

There is not one word of evidence in the record in this case that a single carload of livestock was ever delivered in Chicago at a place other than at the yards of the Stock Yard Company. The volume of the traffic handled by the Stock Yard Company is vast (R. 149, 175). Not only does the record show that the line haul carriers make delivery of all livestock consigned to sub-station Union Stock Yards,

Chicago, at the yards of the Stock Yard Company but it also shows that they deliver such livestock at the yards of the Stock Yard Company *even where the billing expressly provides that they shall not go into such yards.* A witness for the Hygrade Company testified that that Company had billed 22 cars of livestock to Chicago with an explicit statement on the livestock contract not to deliver at the yards of the Stock Yard Company. The cars so billed, together with the directions written on the bill, are shown in Exhibit 13, Original Exhibits filed herein at page 8. A copy of a single livestock contract containing this billing is at page 7 of the Original Exhibits filed herein. Despite this billing, the livestock was taken to the yards of the Stock Yard Company and delivered therein, and the Hygrade Company was forced to pay the yardage charges thereon (R. 113, 114). No notice that this procedure had been followed was given to the Hygrade Company until after the arrival of the stock at the stock yards, and no notice whatever was given by the carriers who were responsible for the movement (R. 116, 161, 162, 177). This action on the part of appellant carriers is particularly important in view of their contention that they have yards in the Chicago switching district at which livestock may be delivered.

The Stock Yard Company has been repeatedly held to be the livestock terminal of the carrier entering the Chicago switching district both by the Commission and by this Court.

Livestock Loading and Unloading Charges, 52 I. C. C. 209, 224, s. c., 58 I. C. C. 164, at 167, 168;

Adams v. *Mills,* 286 U. S. 397, 409;

United States v. *Union Stock Yards,* 226 U. S. 286.

This evidence and the previous holdings of the courts fully support the Commission's finding herein that the yards of the Stock Yard Company constitute the livestock terminal of the line haul carriers at Chicago. There is no evidence whatever to the contrary.

There is no substantial evidence in the record that the line haul carriers maintain yards other than those of the Stock Yard Company at which deliveries of livestock may be made.

Appellants have contended in their briefs that they maintain facilities on their own rails at which delivery of livestock consigned to Chicago can be obtained (Brief in 606, at p. 36). The Commission found with respect to this contention:

> "Within the switching limits of Chicago, in addition to the facilities of the Union Stock Yards, certain of the line haul carriers maintain facilities for unloading livestock, the use of which by complainant is impractical" (R. 26).

The finding of the Commission is the only one which could have been made on the record made in this case. Appellants did not introduce a single word of evidence to show that they had any facilities whatever within the Chicago switching district, or if they had such facilities, that they were adequate or efficient. They rely to support their position on certain evidence brought out on the cross-examination of the Hygrade Company's Traffic Manager, which is set forth in full at R. 121, 122, and on statements contained in certain tariffs filed by the appellants with the Interstate Commerce Commission to which reference was made by the Hygrade Traffic Manager (R. 112, 113).

The Hygrade Company's witness merely gave oral expression to statements which he had seen in tariffs of the carriers. He did not pretend to any knowledge of the adequacy of the facilities provided by the line haul carriers, and made no statement with respect thereto. No burden rested upon the Hygrade Company to show before the Commission that the appellants did not have adequate and available facilities at other points in Chicago at which deliveries of livestock could be made. The Commission is a fact-finding body, and if appellants desire to rely upon facts with respect to other facilities, they should have introduced evidence with respect thereto.

Florida v. *United States*, 282 U. S. 194, at 215.

There is evidence, however, which leads to the direct inference that the carriers maintain no such facilities as they affirm, but neglect to prove, that they possess. When livestock was billed to the Hygrade Company with the express instruction that it should not be taken to the yards of the Stock Yard Company (R. 113, 114, Exhibits 12, 13), it was nevertheless delivered at those yards and the Hygrade Company was compelled to pay the yardage charge (R. 114). If appellants have such facilities as they claim, why did they not conform to the instructions of the billings and, since they refused to make a side-track delivery at complainant's plant, deliver such livestock at the facilities which they now suggest that they possess? The only conclusion possible is that the appellants did not maintain adequate facilities at any point in Chicago other than those at the yards of the Stock Yard Company, and that the reference in their tariffs to other facilities is merely for the purpose of enabling them to charge an additional sum for making deliveries at substation Union Stock Yards.

Appellants suggest that the arrangement whereunder they deliver live stock with their own trains and their own crews at the sidings of the Stock Yard Company is a "voluntary arrangement" which they may terminate at any time. They also suggest that their right to cancel the present rate and trackage arrangement should be conceded.

The record shows that appellant-carriers all concur in a Tariff which names Union Stock Yards as a substation in the Chicago Switching District and provides the rates applicable thereto. (R. 110-113, Galligan's Tariff, No. 20-S, I. C. C. No. 182, Item 1490 on page 70, and page 76). The rates for delivery at substation Union Stock Yards, Chicago, are in excess of the flat Chicago rate in the amount of $2.70 where delivery is made by a Western carrier and $1.35 where delivery is made by an Eastern carrier (R. 110, Tariff references given above).

The "Chicago Switching District" is something entirely distinct from Chicago. It is a territory the boundaries of which are prescribed in Galligan's Tariff, No. 20-S, I. C. C. No. 182, page 8, note 2, and extends on the west several miles outside of the City limits of Chicago and on the south and east goes so far as to take in the large cities of Hammond and Whiting, Ind., with all their substantial industries. Within this territory designated as "Chicago Switching District" are upwards of 450 stations and designations many miles apart as far as from Des Plaines on the north to Hessville, Indiana, on the south.

Appellant line haul carriers operate over the tracks of the Chicago Junction Railway Company to the chutes and sidings of the Stock Yard Company under a trackage arrangement which has been in effect for more than sixty years (R. 162). The Commission when it authorized the

present lease of the railroad properties of the Stock Yard Company specifically provided at the request of other intervening carriers that:

> "The present traffic and operating relationship existing between the Junction and River Road and all carriers operating in Chicago shall be continued in so far as such matters are within the control of the Central."
>
> *Chicago Junction Case*, 71 I. C. C., 631 at 639.

The traffic arrangements which appellants have with the Chicago Junction Railway Company and its present sublessee, the Chicago River & Indiana Railroad Company, constitute the tracks of the Chicago Junction Railway a part of the railroad line of each of appellant line haul carriers, and further constitute substation Union Stock Yards, a station on their line of railroad. They could not cease to deliver live stock at substation Union Stock Yards without the consent of the Commission obtained in an abandonment proceeding under Section 1 (18) of the Interstate Commerce Act—*Transit Commission* v. *United States*, 289 U. S. 121.

This Court there said, referring to a trackage arrangement which the Long Island Railroad Company had with the Pennsylvania Railroad Company, at 129:

> "The use is a joint one, but it is nevertheless 'operation.' And the phrase, 'engage in transportation . . .. by means of such additional or extended line of railroad' reasonably may be deemed to include a line owned by another carrier. The Long Island's use of the Pennsylvania lines covered by the agreement serves the same purpose as would the acquisition of such lines by purchase or

> the construction by it of a like extension into Manhattan. The provision as to abandonment is also significant, for if the Long Island were to cease to use the lines covered by the agreement, it reasonably might be held to have abandoned a 'portion of a line of railroad.' Any interpretation excluding the lines of railroad in question would conflict with implications of our decisions. *Alabama & V. Ry.* v. *Jackson & E. Ry., supra,* 250. *Cleveland, C. C. & St. L. Ry.* v. *United States,* 275 U. S. 404, 409. The provisions of paragraph (18) undoubtedly apply to the operations under trackage agreements such as that under consideration."

Since substation Union Stock Yards is a station on the line of each of appellant-carriers at which they are required to make deliveries of live stock, they must provide facilities for making such deliveries without additional charge at that station. The fact that they have facilities at another station to which a different and lower rate applies is entirely immaterial, as pointed out by complainant's witness on cross-examination.

Mr. O'Brien, General Manager of the Chicago Junction Railway, called as a witness for the appellant carriers (Record, 162), testified that:

> "The unloading of the livestock ought to be near the place where the slaughtering was done" (Record, 166).

Appellant carriers contend (Appellants' Brief, p. 44):

> "Thus, appellants having established their own facilities for unloading livestock in Chicago, cannot be compelled to establish at the stockyard another set of facilities at which they incur all obligations incurred by them at their own facilities."

The record is devoid of evidence that the appellants have established such facilities for unloading livestock in Chicago.

But where are these separate terminals? Are they readily accessible? The terminal on the Chicago & Northwestern R. R. in the Chicago Switching District, is at the town of Proviso, Illinois (R. 121), several miles outside of the city limits of Chicago and in the neighborhood of fifteen miles from the stockyards. If we should adopt the appellant carriers' contention, the carriers might, by extending that area which they call the Chicago Switching District sufficiently so as to bring the City of Milwaukee within the district, offer their livestock unloading facilities at Milwaukee as a sufficient alternative to their duty to furnish facilities at Union Stock Yards.

POINT V.

No error was committed by the inclusion in the order of the Commission of the Union Stock Yard and Transit Company as one of the defendants against which the order was directed.

(a) The Stock Yard Company is a common carrier subject to the jurisdiction of the Interstate Commerce Act.

Appellants contend that while the Stock Yard Company has been repeatedly held to be a common carrier subject to the jurisdiction of the Interstate Commerce Act, it is no longer so subject, and its inclusion as a defendant in the order of the Commission constituted error. Its removal from the class of common carriers is claimed to have been accomplished by certain changes in the forms of the leases

of the railroad which is still owned by the Stock Yard Company and which was previously leased to and operated by the Chicago Junction Railway Company, a common carrier, the stock of which railroad company was held by a holding company which also held and still holds the stock of the Stock Yard Company.

The Union Stock Yard and Transit Company was organized under a special charter of the Legislature of Illinois, dated February 13, 1865, (Exhibits 20, 21, Original Exhibits filed herein, pp. 10-26, R. 147). By the terms of its charter, under which it still operates (R. 209) it was authorized to construct and operate a public stockyards. Section 3 of the charter requires in mandatory language that the Stock Yard Company shall construct a railway so as to connect its tracks with the tracks of all the railroads then entering Chicago. By this section it was also given the power to make connections with such railroads in a manner which would enable the trains running on these line haul railroads "easily and conveniently to approach the grounds selected for" the stockyards. It was also given the power to "make such arrangements or contracts with such railroad companies or either of them for the use of any part or portion of the track or tracks of such company or companies which now is or hereafter may be constructed for the purposes aforesaid." The trunk line carriers entering Chicago at the date of the organization of the Stock Yard Company subscribed to $925,000 of the $1,000,000 authorized capital stock of the Stock Yard Company (R. 147, 52 I. C. C. 210, referred to by a witness for the Stock Yard Company at R. 147).

The language of the charter of the Stock Yard Company shows clearly that the company was organized for the

specific purpose of furnishing stockyard facilities to the line haul carriers entering Chicago, and that it was the intention of the organizers of the company so to construct the railway which the Stock Yard Company was organized to build as to enable the line haul carriers to move their own trains with their own engines and crews to the stockyards built by the Company as authorized in its charter. That purpose was evident in its charter, and that is the manner in which the line haul carriers have made deliveries to the yards of the Stock Yard Company from the time of its construction until the present time (R. 106, 135, 149, 162, 168, 174). The trains, engines and crews of the line haul carriers are permitted to move over the Junction only to the chutes and sidings of the Stock Yard Company (R. 164) and there is no through rate provided to industries on the Chicago Junction other than to the chutes and sidings of the Stock Yard Company (R. 179).

In 1897 the Stock Yard Company leased its rails to the Chicago & Indiana State Line Company, which later, through a consolidation, became the Chicago Junction Railway Company, for a period of 50 years at a rental of two-thirds of the earnings of the property. The stock of the Stock Yard Company and the Chicago Junction Railway Company was held by, and the companies were under the common control of, a New Jersey corporation, and this relationship still exists (R. 148).

This was the situation which existed when this Court held in *United States* v. *Union Stock Yard Company*, 226 U. S. 286, that the Stock Yard Company was a common carrier subject to the jurisdiction of the Interstate Commerce Commission.

Shortly after the decision by this Court in 226 U. S., the terms of the lease betwen the Stock Yard Company and the Chicago Junction Railway Company were changed. The railroad property of the Stock Yard Company was leased in perpetuity to the Chicago Junction for a rental of $600,000 a year (R. 147) but the services performed jointly by the Stock Yard Company and the Junction Company remained the same. When this arrangement was passed upon by the Interstate Commerce Commission in *Chicago Live Stock Exchange* v. *A. T. & S. F. Ry. Co.*, the Stock Yard Company was again held to be a common carrier subject to the jurisdiction of the Interstate Commerce Act. (52 I. C. C. 209, at 221, 223). Another report in this case was later rendered by the Commission (58 I. C. C. 164), and the findings of the Commission in that case were sustained by this Court in *Adams* v. *Mills*, 286 U. S. 397. The plain inference of that case is that this Court approved the finding of the Commission that the Stock Yards still remained a common carrier (see 286 U. S. at 415).

Two years after the adverse finding of the Commission in 58 I. C. C. 164 an application was made to the Commission for the approval of the lease by the Chicago Junction of all its properties, owned and leased, to the Chicago River & Indiana Railroad Company, and of the purchase by the New York Central Railroad Company of all of the stock of the Chicago River & Indiana Railroad Company. The application was approved by the Commission, 71 I. C. C. 631; the lease was made with the consent of the Stock Yard Company (R. 148), and with minor modifications (see 150 I. C. C. 52) still continues. The Stock Yard Company still receives $600,000 per year as a return from its ownership of the rails over which the line haul carriers bring live-

stock in a continuous movement from the point of origin to its chutes and sidings. Aside from any technical rearrangements of the legal situation, *the actual working arrangements continue to be the same.* The line haul carriers still haul the cars under their own power to the unloading platforms. The Stock Yard Company still performs in fact all the other services.

Aside from its ownership of the rails over which the livestock is transported to destination, the Stock Yard Company performs a great variety of services of a common carrier nature which subject it to the jurisdiction of the Interstate Commerce Commission. The statement at page 15 of the Brief on behalf of the Stock Yard Company that the Stock Yards "has not been employed by the railroads to do for them more than to unload the livestock into unloading pens and to perform certain clerical services" is extremely inaccurate.

1. It owns, maintains and repairs the unloading platforms which are necessary for the unloading of livestock at the Chicago market (R. 149).

2. It owns, maintains and repairs the unloading chutes (R. 149).

3. It owns, maintains, repairs and operates the unloading pens (R. 149).

4. It performs the service of opening the car doors (R. 149).

5. It unloads the livestock delivered at its platforms (R. 135, 148, 149).

6. It takes charge of and disposes of all dead or crippled animals (R. 167), and keeps a record of the same (R. 150).

7. It weighs the livestock for the benefit of the line haul carriers to determine the amount of the freight charges (R. 108, 118, 119, 129, 154).

8. It makes out the freight bills and sends them to the consignees for payment (R. 106, 107, 154, 155, Ex. 11).

9. It collects the freight due (R. 106, 107, 154, 155, Ex. 11).

10. It guarantees to the railroads their freight charges (R. 150) and requires and receives a bond to cover such freight charges from the consignees (R. 115, 155).

11. It notifies the consignees of the arrival of their merchandise (R. 150).

12. It takes the numbers of the inbound and outbound cars and keeps the bookkeeping record thereof (R. 167).

13. Except in cases arising from the negligence of the Stock Yard Company, claims for damages to the consigned live stock even after unloading, are paid by the Railroads (R. 116, 160).

14. It provides watchmen to protect the property and policemen to protect it and keep order (R. 151).

15. It owns and maintains the exits from the unloading pens through which exits consignees are able to get their livestock away from the point of actual delivery either on to their own property or on to the public highway (R. 120, 121).

16. With respect to outbound freight, it does the reverse of all these things which it does with respect to inbound freight.

> "If the animals are purchased for shipment, the Stock Yards employees drive them to the Shipping Division and again act as Agent of the railroad companies in loading the animals from the chutes into the cars" (Testimony of Henkle, Vice President and General Manager of the Stock Yard Company, R. 153).

Henkle further testified (R. 153):

> "To perform all this service requires an organization and facilities which are very complete. • • • Handling stock in this fashion, both as to loading and unloading service and the yards service, is the only thing that renders practical the receipt, sale and delivery in the Chicago market of the animals that are handled there daily."

The foregoing catalogue of services are those services which the appellant Stock Yard Company in its brief has sought to belittle under the statement that "the Yard Company is the mere 'owner' of certain property 'used' by railroad companies and performs only certain labor and clerical activities for such railroad companies merely as their 'agent' " (Brief of Stock Yard Company, pp. 29 and 30).

The Stock Yards in fact constitute the livestock terminals of line haul carriers at Chicago as the Commission found in its report herein (R. 26). As this Court recently stated in *Adams* v. *Mills*, 286 U. S. at 409:

> "That the yards are in effect terminals of the railroads is clear. They are in fact used as terminals and necessarily so."

The appellant, in relying upon changes in the terms of its leases as a means of evading the jurisdiction of the Interstate Commerce Commission, has entirely misconstrued the reason why it was held to be and still is a common carrier subject to the jurisdiction of the Commission. The controlling fact relied upon by this Court and by the Commission in holding the Stock Yard Company subject to the Act relates to the services which it performed with respect to transportation. It is settled doctrine that this is the controlling factor in establishing its common carrier status.

U. S. v. *Union Stock Yards*, 226 U. S. 286;
U. S. v. *Brooklyn Terminal*, 249 U. S. 296.

This Court stated in *United States* v. *Union Stock Yard Company*, 226 U. S. at 304-305:

> "Together, these companies, as to freight which is being carried in interstate commerce, engage in transportation within the meaning of the act and perform services as a railroad when they take the freight delivered at the stock yards, load it upon cars and transport it for a substantial distance upon its journey in interstate commerce, under a through rate and bill furnished by the trunk line carrier, or receive it while it is still in progress in interstate commerce upon a through rate which includes the terminal services rendered by the two companies, and complete its delivery to the consignee. They are common carriers because they are made such by the terms of their charters, hold themselves out as such and constantly act in that capacity, and because they are so treated by the great railroad systems which use them."

Again, holding that the Brooklyn Eastern District Terminal was subject to the Hours of Service Act, this Court stated in *United States* v. *Brooklyn Terminal*, 249 U. S. 296, at 304:

> "We have merely to determine whether Congress, in declaring the Hours of Service Act applicable 'to any common carrier or carriers, their officers, agents, and employees, engaged in the transportation of passengers or property by railroad,' made its prohibitions applicable to the Terminal and its employees engaged in the operations here involved. *The answer to that question does not depend upon whether its charter declares it to be a common carrier, nor upon whether the State of incorporation considers it such; but upon what it does. Terminal Taxicab Co.* v. *District of Columbia*, 241 U. S. 252, 254. (Italics ours.)
>
> The relation of the Terminal to the several railroads is substantially the same as that of the terminal considered in *United States* v. *Baltimore & Ohio R. R. Co.*, 225 U. S. 306; 231 U. S. 274, 288. The transportation performed by the railroads begins and ends at the Terminal. Its docks and warehouses are public freight stations of the railroads. These with its car floats, even if not under common ownership or management, are used as an integral part of each railroad line, like the stockyards in *United States* v. *Union Stock Yard Co.*, 226 U. S. 286, and the wharfage facilities in *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission*, 219 U. S. 498. They are clearly unlike private plant facilities." (Italics ours.)

The present manner by which livestock is transported on a through haul from point of origin to point of desti-

nation, and the services performed by the Stock Yard Company in assisting in that complete transportation, are identical with those in effect when the original *Stock Yard* case was decided in 226 U. S. 286. The only distinction which could be drawn is that the Stock Yard Company instead of cooperating with the Chicago Junction Railway in the through delivery of cars of livestock is now cooperating with another lessee or sublessee equally subject to the Act.

Appellants contend that the Stock Yard Company is not a "common carrier engaged in the transportation of passengers or property wholly by railroad" within the meaning of paragraph 1 of Section 1 of the Interstate Commerce Act, relying upon *Ellis* v. *Interstate Commerce Commission*, 237 U. S. 434, and *Chicago Refrigerator Co.* v. *Interstate Commerce Commission*, 265 U. S. 292, in support of this proposition. But these cases are clearly not applicable. In both the *Ellis* case and the *Chicago Refrigerator Co.* case, neither of the corporations there held not subject to the Act performed any common carrier functions. They merely furnished to the railroad company facilities used by it in performing such functions. In neither case did the corporation sought to be held subject to the Act have any control over the instrumentalities of transportation in the possession of the common carriers which were using them. This is the point relied upon in *Ellis* v. *Interstate Commerce Commission*, 237 U. S. at 443, in holding the Armour Car Line not subject to the Act, and is similarly relied on in *United States* v. *Interstate Commerce Commission*, 265 U. S. 292.

Here, however, the Stock Yard Company has actual control over certain phases of the beginning and comple-

tion of transportation, and, as has been held by the Commission, is a terminal of the line haul carriers in Chicago. The term "railroad" as defined in Section 1 (3) of the Interstate Commerce Act includes "terminals and terminal facilities". The reason for holding the car companies involved in the cases cited, *supra*, not subject to the Act therefore disappears. The Stock Yard Company here is a terminal and has terminal facilitites within the meaning of Section 1 (3), and is engaged in transportation as therein defined to include "receipt, delivery, * * * and handling of property transported."

No contention is made, as suggested in the brief of appellant carriers at 63, that the Stock Yard Company is a common carrier *because* it is an agent of the line haul carriers. Exactly the reverse is true. The Stock Yard Company is a common carrier *even though it be* an agent of the railroad company in the performance of transportation services. *U. S.* v. *Brooklyn Terminal*, 249 U. S. at 304; *Adams* v. *Mills*, 286 U. S. at 415.

(b) The Stock Yard Company would have been subject to the order of the Commission herein whether or not it was included in said order by name. It is in any event the agent.

The Commission has found that the yards of the Stock Yard Company constitute the livestock terminals of the line haul carriers entering Chicago (R. 26). This finding is amply sustained by the evidence contained in the record, a resume of which is set forth herein, *supra*, at pages 37-40 and 47-51. It is there shown that the tariffs now filed by the Stock Yard Company with the Commission designate that Company as the agent of the line haul carriers in loading and unloading the livestock (Ex. 22). We have catalogued

above at pages 50, 51, the numerous additional services performed by the Company as the agent and for the benefit of the line haul carriers.

Even though the Stock Yard Company had not been included by name in the order issued by the Commission, it would have been required to abide by that order as the agent of the carriers. Section 16 (7) of the Interstate Commerce Act, 49 U. S. C. A. Section 16 (7), 34 Stat. 591, provides:

> "It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders (of the Commission) so long as the same shall remain in effect."

The evidence amply demonstrates that the Stock Yard Company is the agent of the line haul carriers making deliveries of livestock at Chicago. As such, it would be required by the terms of Section 16 (7) to abide by the order of the Commission made herein even though it were not named therein.

The Stock Yard Company is enabled to collect and retain the yardage charges in issue by reason of the practice whereby the line haul carriers have constituted the yards of the Stock Yard Company their terminals for the delivery of livestock in Chicago. They have placed it in the power of the Stock Yard Company to collect these additional charges for the mere service of delivery, and it is entirely proper that the order of the Commission should be directed against them jointly for the practice jointly pursued. *Adams* v. *Mills*, 286 U. S. 397, at 415.

The contention made by the counsel for the Stock Yard Company in his brief (p. 30 thereof) that:—"Only in con-

nection with criminal provisions of the Act are 'agents' of railroads directly regulated when not themselves common carriers" is, we believe, in the light of the provisions of Section 16 (7) of the Act above referred to, entirely erroneous.

POINT VI.

The findings contained in the report of the Commission, and the order entered upon said findings are definite and certain.

(a) The findings of the Commission with respect to the point at which the transportation service of the carriers terminates are definite and certain.

The Commission found in its report "that livestock, in carloads, consigned to complainant at the Union Stock Yards was not and is not subject to yardage charges in instances where delivery was or is taken at the unloading pens" (R. 31).

Based upon this finding, the Commission entered its order requiring appellants "to abstain from the practices described in the aforesaid report which subject complainant to the payment of yardage charges on livestock, in carloads, consigned to complainant at Union Stock Yards, Chicago, in instances where delivery is taken at the unloading pens provided for such purposes" (R. 38).

Appellants contend that this finding of the Commission and the order based thereon do not define their obligations with sufficient exactness (Brief in No. 606, at 58, 59). They apparently contend that the Commission should have, in addition to the above finding, stated the number of minutes or hours within which a consignee should be required to

accept delivery of his livestock, in order to avoid the payment of a yardage charge.

The Commission found, however, that under the conditions existing at the yards of the Stock Yards Company, no definite number of minutes could be prescribed as a reasonable time within which consignees must accept delivery of their live stock to avoid paying the yardage charge. The Commission stated in its report:

> "A charge for the yardage of livestock after consignee has not taken advantage of any reasonable opportunity afforded to obtain prompt delivery is not a violation of any provision of the Interstate Commerce Act. What constitutes a reasonable opportunity may be determined from the circumstances at the particular yards concerned" (R. 29).

The Commission then reviewed the conditions existing at the yards of the Stock Yards Company to determine what would constitute a reasonable opportunity at those yards. It found that at certain times of the day, livestock was required to be removed from the yards within two minutes after its arrival. At other times of the day, it found that the livestock may remain in the unloading pens for longer periods (R. 29-30). The Commission later stated:

> "There cannot be reasonable doubt that the unloading chutes and pens are suitable for the receipt of livestock and the accomplishment of proper delivery to complainant" (R. 30).

Having found that the unloading pens were suitable pens from which the Hygrade Company might accept delivery, the Commission held that the time within which livestock must be accepted by the Hygrade Company and

removed from the yards of the Stock Yard Company varied with the promptness with which operating conditions at the yards required that the livestock be removed from the unloading pens. The Commission held in effect that a reasonable time for accepting livestock at the yards of the Stock Yard Company varies from time to time, and it fixes a method by which that variance may be determined pragmatically. If the Hygrade Company receives its livestock at the unloading pens, the Commission holds that it receives nothing more than the transportation service of delivery. But if the livestock is removed from the unloading pens by employees of the Stock Yard Company and placed in holding pens, then the Commission states that a stock yard service is rendered for which a charge may be imposed. *And the employees of the Stock Yard Company may remove the livestock from the unloading pens at any time after their arrival if the employees of the Hygrade Company are not there ready to receive them.*

The test laid down by the Commission to determine whether or not the transportation service is ended is the same as that now being applied by the Stock Yard Company in keeping its records. The General Manager of the Stock Yard Company sought to introduce in evidence before the Commission a statement showing all shipments arriving at the yards consigned to the Hygrade Company during the year ending with the month of September, 1931. The exhibit was objected to, and a substitute was ordered to be furnished (R. 157). The exhibit submitted showed that some of the livestock delivered to the Hygrade Company was "yarded" and that others were "delivered". Asked to explain the terms used, the witness stated (R. 157):

> "By the term 'yardage' as shown on that exhibit I mean that employees of the Stock Yards Company have removed the animals from the chute pens in all cases where it said 'yarded'. In the case of those cars after which appears the word 'delivered' it means that the employees of the Hygrade Corporation themselves took delivery of the animals directly from the unloading chutes. That is all it means."

A substitute exhibit was furnished subsequently as Exhibit 24, Original Exhibits herein at pages 37-48, where the same distinction is made.

Since the records made by the Stock Yard Company for the benefit of appellant carriers are already kept on the basis which the Commission found applicable, there will be no such difficulty as appellants suggest in determining what cars of livestock have received mere transportation services, and what cars have received yardage services.

(b) There was no necessity for the Commission's finding in this proceeding what arrangement should be made by appellants to comply with the order of the Commission. The manner in which the practice condemned was to be eliminated was left to the discretion of appellants.

A finding as to the manner in which appellants should comply with the order of the Commission was not necessary to a determination of this case. The Commission found that the practice jointly pursued by the railroads and the Stock Yard Company whereby yardage charges were assessed on livestock for which no service in addition to transportation had been rendered was unlawful, and ordered that it be discontinued. The Commission had no obligation to pre-determine what the appellants should do as a lawful alternative to their present unlawful practice.

The Commission left to the discretion of the defendants before it the determination of the manner in which the practice should be discontinued. Various alternatives are open to the appellants. Appellant carriers may reach an agreement with the Stock Yard Company with respect to the amount to be paid by the appellant carriers to the Stock Yard Company for the performance of appellant carriers' transportation duty of making delivery without charges in addition to the lawfully published tariff rates. If its revenues from the transportation of livestock are insufficient to bear the charge which it is required to pay, it may increase its rates pursuant to the provisions of Section 6(3) of the Interstate Commerce Act. The Commission is fully empowered to pass upon the reasonableness of any increase, and the necessity therefor (see Interstate Commerce Act, Section 15(7)).

If appellant carriers and the Stock Yard Company cannot agree upon the charge which should be paid by appellant carriers to the Stock Yard Company merely for permitting the Hygrade Company to come upon its grounds and drive its own livestock with its own men out of such yards where appellant carriers have delivered them, appellant carriers may make application to the Interstate Commerce Commission under Section 15 (3) of the Act to establish through rates and joint rates, fares or charges and the divisions of such rates, fares or charges. The jurisdiction of the Commission to entertain such a proceeding was pointed out to the carriers when they made a similar contention in *Live Stock Loading and Unloading Charges*, 58 I. C. C. 164, where the Commission stated, at 167:

"The apprehensions of the line-haul carriers that the stockyard company may make any charge it pleases, which they will be required to pay, are not well founded. Upon their complaint or upon the complaint of any party, we can examine any of the charges that make up the sum of the through charges, and may prescribe just and reasonable rates for all carriers concerned, either by prescribing through rates and joint rates and the divisions thereof, or otherwise, as the facts may warrant."

Or appellant carriers may, if they desire, establish facilities at substation Union Stock Yards other than the yards of the Stock Yard Company at which consignees may obtain delivery of their live stock without being forced to pay a charge in addition to the line haul rates for that mere service of delivery.

Similarly, they may amend their tariffs to provide for side track delivery at the Hygrade Company's plant at the same rate which applies to the chutes and sidings of the Stock Yard Company. The record shows that the Hygrade Company would be entirely satisfied with such delivery. It demanded it in its complaint filed with the Commission (R. 16), and introduced evidence to show that it had facilities to accept such delivery (R. 119, 120).

The Commission was not concerned in this case with which of the various alternatives open to appellants was adopted by them, so long as the present unlawful practice was terminated. Appellants should not be permitted to import into this proceeding brought by a shipper to correct an unlawful practice any dispute which appellants may have among themselves as to the method which they will

pursue to rectify the wrong presently being done. As this Court said in *Adams* v. *Mills*, 286 U. S. 397:

> "The question at issue is not the reasonableness of the charge, but the lawfulness of the practice, jointly pursued by the railroads and the company, of collecting the extra charge from the shipper. The reasonableness of the charge itself, and the complementary question whether the railroads should be required to absorb it, were in no way involved before the Commission; and that tribunal properly made no finding with respect thereto."

The order of the Commission, in leaving to the determination of the petitioners and the Stock Yard Company the manner in which the yardage charge should be disposed of, is in conformity with many similar previous orders of the Commission, the propriety of which have been consistently sustained by this Court.

American Express Co. v. *Caldwell*, 244 U. S. 617, at 625;
U. S. v. *Pennsylvania Railroad Co.*, 266 U. S. 191;
Chicago, I. & L. Ry. Co. v. *U. S.*, 270 U. S., 287, 292, 293.

In *U. S.* v. *Pennsylvania Railroad Co.*, 266 U. S. 191, an order of the Interstate Commerce Commission requiring certain railroads to desist from unjust discrimination therein found to exist was attacked. This unjust discrimination resulted from the carriers' switching over intermediate carriers without extra charge for seventeen manufacturers in York, Pa., while assessing a charge against other manufacturers for similar switching operations. The

order of the Commission did not indicate the manner in which the discrimination should be removed, and it was contended that the carriers, in order to remove it, would be required to extend their tracks, enlarge the common use of terminals, or equalize rates and charges for plants within and without the zone, that the Commission had thereby exercised power conferred upon it by Section 1, paragraph (21), Section 3, paragraph (4), or Section 15, paragraphs (3) and (4), without having made the findings appropriate to the exercise of its power under those sections. This contention was rejected by this Court, which stated at 199:

> "It is true that an extension of trackage rights, an enlarged common use of terminals, or the establishment of through routes and joint rates, or the withdrawal of any of them, could not be ordered except upon the findings and conditions prescribed in the act. But the order complained of does not require any such thing. It requires only that the carriers shall desist from a practice which involves such use as has resulted and will result in the undue prejudice found. The order leaves them free to remove the discrimination by any appropriate action."

Substantially the same contention was made against the validity of an order of the Commission directing the removal of unjust discrimination held to have been practiced against an electric railroad in the case of *Chicago, I. & L. Ry. v. U. S.*, 270 U. S. 287, and the same answer was made to the contention by this Court.

The assumption by appellant carriers that if, in their discretion, they choose to conform to the requirements of

the Commission's order by absorbing a charge of the Stock Yard Company, that charge will be in the amount presently collected from the Hygrade Company under the purported authority of schedules filed with the Secretary of Agriculture is entirely unwarranted. This charge is a charge for transportation, and its reasonableness is subject to review by the Commission just as that of any other transportation charge.

(c) The law does not require the Commission to specify in findings or report under what section of the Interstate Commerce Act it is proceeding.

Appellants complain that the Commission did not designate in its order the specific provision of the Act whereunder the order was made, and seek to establish that because thereof, the order is void.

It was entirely unnecessary for the Commission to state in explicit words what section of the Act it found had been violated. The findings of the Commission in its report indicate beyond doubt that the order was made pursuant to the provisions of Section 1(6) and Section 15(1) of the Act.

The complaint of the Hygrade Company before the Commission alleged that the practice of appellants in making the yards of the Stock Yard Company their depot for the receipt and delivery of livestock under an arrangement wherein and whereby the Stock Yard Company was permitted to and did impose a yardage charge upon the Hygrade Company was unjust and unreasonable, in violation of Section 1 of the Act (R. 23). The complaint also alleged that the yardage charges were collected without tariff authority in violation of Section 6 of the Act.

The Commission, after reviewing the record, made the following finding:

> "It is here demonstrated that there are no services performed after unloading for which defendants may assess charges, in instances where delivery is taken at the unloading pens" (R. 31).

Having made this finding, the Commission stated:

> "We further find that livestock, in carloads, consigned to complainant at the Union Stock Yards was not and is not subject to yardage charges in instances where delivery was or is taken at the unloading pens" (R. 31).

The Commission determined from the evidence presented to it that no services other than transportation services were rendered by appellants on livestock delivery of which was taken by the Hygrade Company at the unloading pens. Having so determined, it had full authority under Section 1(6) and Section 15(5) to enter the order in question.

Section 1(6) provides, so far as here pertinent, as follows:

> "It is made the duty of all common carriers subject to the provisions of this chapter to establish, observe, and enforce • • • just and reasonable regulations and practices affecting • • • all other matters relating to or connected with the receipt, handling, transporting, storing, and delivery of property subject to the provisions of this chapter • • • and from unjust and unreasonable classification, regulation and practices prohibited and declared to be unlawful."

Section 12 (1) of the Interstate Commerce Act provides:

> "The Commission is authorized and required to execute and enforce the provisions of this chapter."

Section 15 (1), so far as here pertinent, provides:

> "Whenever after full hearing upon a complaint made as provided in Section 13 of this chapter * * * the Commission shall be of opinion * * * that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this chapter, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this chapter, the Commission is authorized and empowered to determine and prescribe * * * what individual or joint classification, regulation, or practice is or will be just, fair and reasonable to be thereafter followed, and make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist."

The Commission here found that no services were being rendered with respect to livestock delivery of which was taken at the unloading pens. It further found that such charges were being assessed. It therefore became its duty under Section 12 (1) and 15 (1) of the Act to make an order directing appellants to cease and desist from the practice by reason of which the unauthorized charges were being assessed. This it did, and it was in no wise necessary that the Commission specify the Section of the Act under which it made the order.

A similar order made by the Commission was sustained by this Court in *Los Angeles Switching* case, 234 U. S. 294. That case involved the validity of an order of the Commission made upon complaint of the Associated Jobbers of Los Angeles which complaint was directed against *two distinct practices*, involving the spur-track switching charges incident to a system-line haul and to a foreign-line haul respectively. A charge in addition to the line-haul rates had been imposed by the line-haul carriers entering Los Angeles for deliveries on spur tracks built by the carriers in that city. The Commission found that these spur tracks were portions of the terminal facilities of the carriers. The only finding of the Commission is contained in its report (23 I. C. C. 310) at 318, where it states:

> "An additional charge may be made when an additional service is given. But the service here given is not additional to that for which the rate pays. If the shipper pays for team-track delivery and does not receive it, but asks instead and is given a sidetrack delivery which costs the carrier no more, he may not be compelled to pay an additional charge upon the assumption that he has received a terminal team-track service which has not been given. A carrier may not so construct its rates as to compel an extra charge for like service, and this, in our judgment, the defendants at Los Angeles have done."

Based upon this finding, it entered an order, quoted in full in *Los Angeles Switching* case, 234 U. S. at 302-303, note, which is substantially identical in form with the order which is here attacked.

This Court sustained the order, stating at 311:

> "But, laying the generalization on one side, it is plain that the question whether or not there is at any point an additional service in connection with industrial spur tracks upon which to base an extra charge, or whether there is merely a substituted service which is substantially a like service to that included in the line-haul rate and not received, is a question of fact to be determined according to the actual conditions of operation.
>
> Such a question is manifestly one upon which it is the province of the Commission to pass."

The facts of the case and the form of the order in the *Los Angeles Switching* case and in the instant case are substantially identical. In both cases, the consignees complained of the practice of exacting a charge in addition to the line-haul rates for a service which was not in addition to the transportation service requested. In both cases the Commission found upon the facts presented that no service in addition to transportation services was performed. In neither case did the Commission expressly refer to the specific provision of the Act under which it made the order complained of, but acted as it had the authority and duty to act, under Section 12 (1) and 15 (1) of the Act, to prevent an unlawful practice which it found to exist.

This Court sustained the order of the Commission in the *Los Angeles Switching* case. The order in the instant case is substantially identical, and it should be sustained.

IN CONCLUSION.

POINT VII.

The decree of the District Court should be affirmed.

Respectfully submitted,

CARL M. OWEN,
HAROLD J. GALLAGHER,
Counsel for Hygrade
Food Products Corporation,
Appellee.

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SUPREME COURT OF THE UNITED STATES.

Nos. 606, 607.—October Term, 1935.

The Atchison, Topeka and Santa Fe Railway Company, et al., Appellants, 606 *vs.* The United States of America, Interstate Commerce Commission and Hygrade Food Products Corporation.	Appeals from the District Court of the United States for the Southern District of New York.
The Union Stock Yard and Transit Company of Chicago, Appellant, 607 *vs.* The United States of America, Interstate Commerce Commission and Hygrade Food Products Corporation.	

[April 29, 1935.]

Mr. Justice Butler delivered the opinion of the Court.

These are separate appeals from a decree of a three judge court dismissing a suit to enjoin enforcement of an order of the Interstate Commerce Commission. 8 F. Supp. 825. The suit was brought by 24 railroads, appellants in No. 606, for convenience called "carriers", against the United States and Interstate Commerce Commission. Twenty-one are line carriers; the other three perform only switching service. The Union Stock Yard & Transit Company, appellant in No. 607, and the Hygrade Food Products Corporation, the complainant before the Commission and one of the appellees here, intervened.

By its complaint to the Commission the Hygrade Company attacked as unreasonable in violation of § 1 of the Interstate Commerce Act (Title 49, U. S. C.) the carriers' tariff charges applicable to switching livestock to its packing plant. And it assailed as inapplicable the yardage charge collected by the Yards Company on livestock delivered at the stockyards. It claims that the service covered by the charge is included in transportation, §§ 1 (3), 15 (5); that, not being specified in carriers' tariffs, they are unlawful, § 6; and that the practice of the carriers and Yards

Company in making the stockyards their depot for delivery of livestock pursuant to an arrangement by which the Yards Company imposes a yardage charge is an unjust and unreasonable practice in violation of § 1.

Subject to regulation by the Secretary of Agriculture under the Packers and Stockyards Act, 1921, 42 Stat. 159, 7 U. S. C., c. 9, the Yards Company operates public stockyards in Chicago. The Hygrade Company in 1929 acquired and has since operated a packing plant that many years ago was established on the Chicago Junction Railway a short distance from the unloading pens in the stockyards. Tracks of the Junction Railway extend into, and are used to haul dead freight to and from, the Hygrade plant. The charge for switching livestock into the plant is $12 per car. To avoid that burden, the Hygrade Company elects, as did its predecessors, to have all livestock intended for slaughter at the plant shipped to the stockyards. These yards are livestock terminals of the carriers and are served by trains operated by them over the tracks of the Junction Railway. Each carrier's tariff specifies rates covering transportation of livestock to Chicago including delivery to consignee on the carrier's own line. But, as practically all shipments to Chicago are consigned to the public stockyards, there is little, if any, need or use of individual carrier unloading facilities.

To cover the movement over the Junction railway to the public stockyards, western carriers add to the Chicago rate $2.70 and eastern carriers $1.35 per car. No additional charge is made for unloading. The carriers employ and pay the Yards Company for unloading the livestock the amount—$1 per car—specified in its tariffs filed with the Interstate Commerce Commission. That work is accomplished by means of platforms and chutes down which the animals are driven from the cars into pens. These pens are not suitable places in which long to hold livestock. At peak periods of stock train arrivals these facilities are so much in use that the Yards Company is able to permit the animals to remain in the unloading pens only a short time—often not more than a few minutes. And, unless promptly taken away by consignee, the Yards Company transfers them to holding pens.

About 85 per cent. of all consignments to the Hygrade Company are so transferred. The others are by it taken from the unloading pens and driven through ways or alleys within the extensive yards properties over scales, where for the purpose of computing freight

charges they are weighed, to and along an elevated runway over pens in the yards and the tracks of the Junction Railway, thence to and through a tunnel, under the proposed extension of Pershing Road (located along what was formerly a part of the Chicago River) ending at the Hygrade Company's plant which abuts on that highway. The Yards Company, in accordance with its tariffs filed with the Secretary of Agriculture, makes and collects a specified charge per head on all livestock received in the yards—being 35, 25, 12 and 8 cents respectively for cattle, calves, hogs and sheep. These charges apply to animals taken by the consignee immediately from unloading pens to its plant as well as to those transferred by the Yards Company to the holding pens later to be taken by consignee. The tariffs of the Yards Company also specify charges for other services.[1] As to each carload, it makes a statement showing separately the carrier's charges and its own. It collects the total, accounts to the carriers for those covered by their tariffs filed with the Interstate Commerce Commission and retains the balance.

The report of the Commission (195 I. C. C. 553) states: The stockyards are livestock terminals of the carriers. Consignees are entitled to delivery at suitable pens without charge for the mere placement therein of the livestock. The unloading pens are suitable for the accomplishment of proper delivery to consignee. The method of handling is efficient and satisfactory. The fact that the carriers have at Chicago destinations other places of delivery where no charge is made is not a legally sufficient reason for an extra charge at the stockyards. As to about 15 per cent. of all shipments consigned to complainant "it has taken delivery before the animals were placed in holding pens". There is no occasion for putting them in holding pens if prompt delivery is desired. The fact that other freight is subject to storage or demurrage charges only after the lapse of considerable time is not a sufficient reason why similar rules should apply in respect of yardage charges on livestock. After unloading, livestock requires unusual attention and care such as is not required by other freight.

The Commission concluded: The switching charge is not shown to be unreasonable or otherwise unlawful.

[1]They include: Feed and feeding, bedding, dipping and spraying, immunizing and incidental care of swine, cattle testing, cleaning and disinfecting of pens, etc., branding, and other special services.

Prompt delivery does not require pens to be so equipped as to provide rest, feed and water for livestock. If placement into pens that are so equipped is desired, an extra charge therefor is not within the inhibition of § 15.

There are no services performed after unloading for which defendants may assess charges in instances where delivery is taken at the unloading pens. The livestock in carloads consigned to complainant at the yards is not subject to yardage charges in instances where delivery is so taken. Complainant is entitled to reparation.

The Commission ordered that the carriers and Yards Company cease and desist from practices which subject complainant to payment of yardage charges on livestock, in instances where delivery is taken at the unloading pens, and that the proceeding may be reopened to ascertain the amount of reparation.

Appellants contend that transportation ends with unloading of livestock into suitable pens and that, for lack of essential findings of fact, the order is void.

Transportation of ordinary livestock in carload lots from and to points other than public stockyards has always been deemed to include furnishing of facilities at the place of shipment for loading and at destination for unloading and suitable ways for convenient ingress and egress. *Covington Stock-Yards Co.* v. *Keith*, 139 U. S. 128, 134-135. *Erie R. R. Co.* v. *Shuart*, 250 U. S. 465, 468. 2 Hutchinson, Carriers, 3d ed., § 510. Cf. *Norfolk Ry.* v. *Public Serv. Comm.*, 265 U. S. 70, 74. And, in the absence of understanding or agreement to the contrary, transportation includes loading and unloading. 4 Elliott, Railroads, 3d ed., § 2346. *Indiana Union Traction Co.* v. *Benadum*, 42 Ind. App. 121, 123. *Davis* v. *Simmons* (Tex. Civ. App.), 240 S. W. 970, 976. *Massey* v. *Texas & P. Ry. Co.* (Tex. Civ. App.) 200 S. W. 409, 410. *Benson* v. *Gray*, 154 Mass. 391, 394.

But for many years, in virtue of custom and as well by the terms of shipping contracts in general use, that burden has been laid upon shippers. 2 Hutchinson, Carriers, 3d ed., § 711. *L. & L. F. Ins. Co.* v. *R., W. & O. R. R. Co.*, 144 N. Y. 200, 205. Indeed, October 21, 1921, the Interstate Commerce Commission, acting under authority of § 15 (1) and following a form of clause submitted by shippers and carriers, prescribed a uniform livestock contract containing § 4 (a): "The shipper at his own risk and expense

shall load and unload the live stock into and out of cars, except in those instances where this duty is made obligatory upon the carrier by statute or is assumed by a lawful tariff provision". 64 I. C. C. 357, 363, App. F. But the practice has long been otherwise at the Chicago Union Stockyards. For more than 50 years prior to 1917 the carriers without any additional charge to shipper or consignee unloaded livestock into pens provided by the Yards Company. *Adams* v. *Mills*, 286 U. S. 397, 410. Paragraph (5) of § 15 enacted in 1920 made the practice general and compulsory in public stockyards throughout the United States. And the Yards Company has always collected a charge on all animals received in its yards. It may be assumed that shippers, commission men and packers including the Hygrade Company have had knowledge of this long existing practice.

Paragraph (5) of § 15 was passed February 28, 1920, during and presumably with knowledge of the controversy later brought here in *Adams* v. *Mills, supra*. While declaring that transportation of livestock to public stockyards shall include unloading without extra charge, it left undisturbed the Yards Company's practice of making a charge for livestock received.[2] The Packers and Stockyards Act approved August 15, 1921, subjects public stockyards to regulation by the Secretary of Agriculture. Section 301 (b) defines stockyards services to include, among other things, facilities furnished at a stockyard in connection with the receiving, holding and delivery of livestock.[3] Section 406 provides that the Act shall not

[2]Section 15 (5) of the Interstate Commerce Act, added by § 418 of the Transportation Act, 1920, 41 Stat. 486, provides:

"Transportation wholly by railroad of ordinary livestock in car-load lots destined to or received at public stockyards shall include all necessary service of unloading and reloading en route, delivery at public stockyards of inbound shipments into suitable pens, and receipt and loading at such yards of outbound shipments, without extra charge therefor to the shipper, consignee or owner, except in cases where the unloading or reloading en route is at the request of the shipper, consignee or owner, or to try an intermediate market, or to comply with quarantine regulations. The Commission may prescribe or approve just and reasonable rules governing each of such excepted services. Nothing in this paragraph shall be construed to affect the duties and liabilities of the carriers now existing by virtue of law respecting the transportation of other than ordinary live stock, or the duty of performing service as to shipments other than those to or from public stockyards". 49 U. S. C., § 15 (5).

[3]"The term 'stockyard services' means services or facilities furnished at a stockyard in connection with the receiving, buying or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce, of livestock". 7 U. S. C., § 201 (b).

affect the jurisdiction of the Commission or confer upon the Secretary concurrent jurisdiction over any matter within the jurisdiction of the Commission.[4]

There is here involved no question as to the adequacy of individual carriers' unloading or other facilities for the delivery of livestock. The Hygrade Company did not seek and the Commission did not grant relief upon the ground that the carriers failed to provide egress from the unloading pens in the public stockyards to the city streets by means of which consignee's animals might be removed to its plant. Consignee sought free delivery in cars switched into its plant but the Commission found the switching charge not unreasonable. Consignee also sought free use of the Yards Company's properties including the overhead runway to take its animals from holding pens as well as from unloading pens to its plant. The Commission held against it as to the first and in its favor as to the other of these demands.

Long continued practice and special conditions made unloading at these yards a transportation service to be performed by the carrier. *Adams* v. *Mills, supra,* 410. So the long established and uniform practice to provide a route via the overhead runway to the Hygrade plant distinguishes the use of the Yards Company's properties for this service from mere egress such as is included in transportation of livestock to destinations other than public yards. Plainly there is an essential difference between the route from unloading pens to consignee's plant and a mere way out to the public highways. Transportation does not include delivery within the Hygrade plant or the furnishing of the properties, overhead runway and all, that are used for that purpose. Usage and physical conditions combined definitely to end transportation, at least in respect of these shipments, with unloading into suitable pens as is now required by § 15 (5). Like the railroads, public stockyards are public utilities subject to regulation in respect of services and charges. The statutes cited clearly disclose intention that jurisdiction of the Secretary shall not overlap that of the Commission. The boundary is the place where transportation ends.

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[4] "Nothing in this Act shall affect the power or jurisdiction of the Interstate Commerce Commission, nor confer upon the Secretary concurrent power or jurisdiction over any matter within the power or jurisdiction of such Commission". 7 U. S. C., § 226.

The Commission's ruling that the imposition of the yardage charge on animals taken by consignee from holding pens does not violate the Act implies that as to those animals transportation ended at the unloading pens. On the other hand, its ruling that in the instances where consignee takes delivery at unloading pens the animals are not subject to the yardage charge suggests that delivery is not completed by unloading into suitable pens. That necessarily implies something more to be done or furnished by the carrier. But the Commission, in respect of the shipments covered by its order, made no definite finding as to what constitutes complete delivery or where transportation ends. Its report does not disclose the basic facts on which it made the challenged order. This court will not search the record to ascertain whether, by use of what there may be found, general and ambiguous statements in the report intended to serve as findings may by construction be given a meaning sufficiently definite and certain to constitute a valid basis for the order. In the absence of a finding of essential basic facts, the order cannot be sustained. *Florida* v. *United States*, 282 U. S. 194, 215. Recently this court has repelled the suggestion that lack of express finding by an administrative agency may be supplied by implication. *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 433. See *Beaumont, S. L. & W. Ry.* v. *United States*, 282 U. S. 74, 86. *Inter. Com. Comm'n* v. *Chicago, &c. R'd Co.*, 186 U. S. 320, 341.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 606 and 607.—October Term, 1934.

606
The Atchison, Topeka and Santa Fe Railway Company, et al., Appellants,
vs.
The United States of America, Interstate Commerce Commission and Hygrade Food Products Corporation.

607
The Union Stock Yard and Transit Company, of Chicago, Appellant,
vs.
The United States of America, Interstate Commerce Commission and Hygrade Food Products Corporation.

Appeals from the District Court of the United States for the Southern District of New York.

[April 29, 1935.]

Mr. Justice Stone.

I think the judgment should be affirmed.

The Interstate Commerce Commission found that the stock yards are the live stock terminals of the carriers; that a "yardage charge" per animal is assessed on all shipments of live stock delivered by the carriers at the stock yards; that the charge is imposed whether the live stock is taken by the consignee directly from the unloading pens or from the holding pens, to which the animals are taken if not immediately removed by the consignee upon arrival; and that appellee removes about 15% of all shipments consigned to it directly from the unloading pens. Upon the basis of these findings the Commission concluded that the yardage charge upon live stock removed from the holding pens is proper, but that the charge is improper and unlawful when made upon live stock received by the consignee and removed immediately upon arrival from the unloading pens and the yards.

These findings are thus the complete and obvious equivalent of a finding that a charge in addition to the scheduled tariff rate is